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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
c/o ██████████
██████████
██████████

DECISION

MPA/153744

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on March 10, 2014, at Madison, Wisconsin. At the request of petitioner's representative, hearings set for January 27, 2014 and February 12, 2014 were rescheduled.

The petitioner's case manager and support broker, ██████████, represented 42 year old ██████████ at that hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals (DHA), and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. ██████████.

This Administrative Law Judge (ALJ) sent a March 21, 2014 cover letter to Ms. ██████████ at the Office of the Inspector General (OIG) with a copy of the following documents which were received at DHA: a) a letter by petitioner's representative ██████████; b) a letter b Community Living Alliance RN ██████████ who supervises petitioner's PCW care; c) a letter from Waisman Center clinical RN, ██████████, who works with the petitioner at her home and at her doctor appointments; d) a November 21, 2013 letter by Dr. ██████████, MD; e) a letter by Waisman Center behavioral consultant, ██████████; f) a very recent, March 17, 2014 letter b Options in Community Living, Inc. executive director, ██████████; g) petitioner's "behavioral Charting"; h) petitioner's "Seizure Data;" and i) a November 20, 2013 authorization by petitioner to be represented by ██████████.

In that same letter, this ALJ request that Ms. ██████████ review the enclosed copies of letters, and submit a detailed reconsideration summary to me at the Division of Hearings and Appeals by April 4, 2014 with a copy of that reconsideration summary letter to be sent to the petitioner's representative, ██████████. The petitioner's representative requested and was granted until April 14, 2014 to respond to Ms. ██████████'s reconsideration summary. Ms. ██████████ sent a March 26, 2014 reconsideration to DHA and petitioner's representative. Ms. ██████████ sent an April 14, 2014 response to OIG's reconsideration which was hand-delivered to DHA on April 14, 2014. Both documents are received into the hearing record.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 49.0 to 41.3 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
c/o ██████████
██████████
██████████

Petitioner's Representative:

██████████, support broker
Progressive Community Services, Inc.

████████████████████
██████████

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: ██████████, nurse consultant
Office of Inspector General (OIG)
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 42 year old resident of Dane County who resides with two roommates. Petitioner is certified as eligible for MA.
2. The petitioner is diagnosed with Moderate Mental Retardation with Development Delay and Epilepsy and significant agitated behaviors.
3. On or about September 27, 2013, the petitioner's provider, Community Living Alliance for the Dane County Department of Human services, requested prior authorization (PA) request # ██████████ for MA coverage of personal care worker (PCW) hours of 196 units or 49.0 hours per week for 53 weeks with 24 PRN (as needed) hours per year for times of acute care needs and to accompany petitioner to medical appointments at a total requested cost of \$40,625.50. See Exhibit 2.
4. In her October 2, 2013 physician evaluation, ██████████ M. ██████████, MD indicated the following safety concerns regarding petitioner that could make PCW services more time consuming and difficult: throws things, hits self and others, scratches self (self-abuse), refuses to cooperate physically, aggressive towards others, noncompliant. Dr. ██████████ indicated that "Standard precautions" need to be observed for all PCW cares and seizure precautions.
5. The petitioner's Personal Care Screening Tool (PCST) was completed by a screener (██████████) on or about September 3, 2103. In that PCST, the screener evaluated the petitioner's needs for personal care worker services hours to be 41.5 hours per week. See Exhibit 1.
6. The petitioner has ongoing, daily problems with incontinence resulting in the need for multiple clean-ups and clothing changes even with her wearing Depends. Petitioner's incontinence was a major deficiency in the PCST because it did not grant sufficient time for

- the hours needed weekly as a result of her ongoing incontinence problems and increased PCW needs. The petitioner required assistance with toileting 3 times per day and assistance for incontinence care 7 times per day. See Exhibit 1, Attachment 3, page 3.
7. There is an increased risk for skin breakdown if petitioner becomes more incontinent while waiting for care.
 8. On review of the PA Request, the Office of Inspector General (OIG) modified the prior authorization request from the requested 49.0 hours to the 41.3 PCW hours based upon the Personal Cares Screening Tool (PCST) assessing the petitioner's PCW needs. The primary reason for the reduction was only allowing a maximum of 90 minutes per day for all toileting and assistance with incontinence care many times per day, and no allowance for the increased PCW services (cleanings, dressings, laundry) needed due to petitioner's daily, ongoing incontinence. See Exhibit 1, page 5, #5.
 9. On or about October 18, 2013, the Department issued a letter Notice to the petitioner informing her that her PA request for personal care worker services had been reduced from 49.0 to 41.3 hours per week plus 24 PRN hours, and then approved as modified.
 10. In her updated November 21, 2013 letter, petitioner's physician, [REDACTED] M. [REDACTED], MD wrote a letter regarding petitioner's need for increased PCW hours. Dr. [REDACTED] indicated that petitioner's history of seizures have increased in frequency, which increases her risk of falls resulting in injury. [REDACTED] has significant aggressive behavioral problems. From a medical and safety standpoint, petitioner's PCW hours needs to be increased to 7 hours per day.
 11. The OIG consultant sent a December 16, 2013 summary in support of its reduction of petitioner's PCW hours with 11 Attachments. See Exhibit 1.
 12. While the record was held open the OIG consultant submitted her March 26, 2014 reconsideration and Ms. [REDACTED] submitted her April 14, 2014 response to DHA. See above Preliminary Recitals.

DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only the following:**

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. **Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;**
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. **Toileting, including use and care of bedpan, urinal, commode or toilet;**

10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

(Emphasis added).

Wis. Admin. Code § DHS 107.112(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the March 10, 2014 hearing and in her April 14, 2014 closing argument, the petitioner's representative, [REDACTED], convincingly testified in detail that petitioner's additional incontinence needs required the full 49.0 hours of PCW services per week (not a reduction to 41.3 hours per week). The petitioner explained that without those full hours she had "accidents" and increased incontinence which could cause skin breakdown problems. Petitioner's representative also indicated that petitioner needed clean-up several times per day with changes of clothing. The hearing record indicates that the PCST significantly underestimated the time needed by petitioner due to her ongoing, daily incontinence which includes the daily clean-ups and redressings. In her April 14, 2014 closing argument, Ms. [REDACTED] persuasively argued that OIG incorrectly "capped" the amount it would grant for toileting per day to 90 minutes per day. See OIG March 26, 2014 argument.

Ms. [REDACTED] established that petitioner needed assistance with toileting 3 times per day and assistance for incontinence care 7 times per day. Ms. [REDACTED] stated on pages 1 and 2 of her April 14, 2014 written closing argument:

Under OIG's own "Personal Care Activity Time Allocation Table" ten (10) minutes per incident is allocated for assistance with toileting and fifteen (15) minutes is allocated per episode of incontinence (Attachment 7). That means according to OIG's own calculations, that [REDACTED] needs assistance due to incontinence for a minimum of 105 minutes per day and toileting assistance 30 minutes per day, for a total of 135 minutes per day – 45 minutes per day and 315 minutes per week more than OIG has allocated.

It is unclear upon what the 90 minute cap is based. The instructions to the PCST do not mention the 90 minute cap (12/16/2013 OIG letter at attachment 8, p.9) and Ms. [REDACTED] has provided no explanation for how it was established. Manifestly, it is an arbitrary number. Not to put too fine a point on it, but are the personal care workers to stop assisting [REDACTED] with toileting once they have spent 90 minutes a day on the activity? Are they to choose 3 episodes of incontinence per day that they do not attend to? The answer is, of course, no. These are tasks that are covered by the Medicaid personal care regulation and [REDACTED] is entitled to have them covered and accounted for. The evidence in the record clearly establishes that an additional 45 minutes per day (315 per week) for assistance with toileting is medically necessary.

Ms. [REDACTED] testimony and written submissions expressed valid concerns about underestimated PCW time needed for petitioner's ongoing incontinence problems with the reduction of her PCW hours. Ms.

██████ also asserted correctly that any increase in PCW hours should also result in a 1.25 percentage increase in her PCW allocation for incidental tasks and behavior/seizure activity per OIG's Exhibit 1, page 5, #6 and #7. The Department did not submit evidence to refute that the reduced PCW time of 41.3 hours did not allow for petitioner's incontinence needs for additional PCW services. In fact, with petitioner's significant behavioral problems, it might take even more PCW time to complete toileting and incontinence services for the petitioner. While the OIG representative alleged in her reconsideration that petitioner may have been attending day programming five days per week, OIG did not provide any reliable documentation to establish that petitioner actually received that day programming. In any case, OIG did not establish with any specific evidence that any possible day programming reduced petitioner's PCW toileting and incontinence needs. Accordingly, based upon the review of the entire hearing record, I conclude that the Department incorrectly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) services from 49.0 to 41.3 hours per week.

CONCLUSIONS OF LAW

1. The Department incorrectly modified (reduced) the petitioner's prior authorization request for personal care worker (PCW) services from 49.0 to 41.3 hours per week.
2. The petitioner's PA request is approved for 49.0 personal care worker (PCW) hours per week in PA request # ██████ plus 24 PRN hours per year approved.

THEREFORE, it is

ORDERED

That the overall provider, Dane County Department of Human Services, is hereby authorized to provide the petitioner with 49.0 hours weekly of PCW time for 53 weeks plus 24 PRN hours per year in PA request # ██████, and to submit its claim, along with a copy of this Decision to EDS Federal Corporation for payment.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

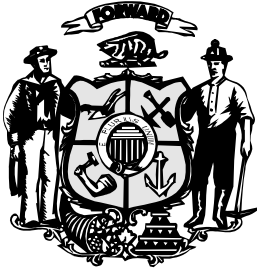
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 15th day of May, 2014

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 15, 2014.

Division of Health Care Access and Accountability
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